

ORIGINAL RECEIVED
DEC 15 1992

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM DOCKET NO. 92-253
)	
BAKCOR BROADCASTING, INC., Debtor)	
c/o DENNIS ELAM, TRUSTEE)	File No. BRH-900330VV
)	
For Renewal of License of)	
Station KLIK(FM))	
Lubbock, Texas)	
)	
and)	
)	
SOUTHWEST EDUCATIONAL MEDIA)	
FOUNDATION OF TEXAS, INC.)	File No. BPED-900629MK
)	
For A Construction Permit)	
For a New FM Station)	
Lubbock, Texas)	

To: Administrative Law Judge
Walter C. Miller

MASS MEDIA BUREAU'S
COMMENTS ON MOTION TO ENLARGE ISSUES

1. On November 30, 1992, Bakcor Broadcasting, Inc., Debtor, c/o Dennis Elam, Trustee ("Bakcor") filed a Motion to Enlarge the Issues in the above-captioned proceeding. Bakcor seeks the addition of the following issues against Southwest Educational Media Foundation of Texas, Inc. ("SEMFOT"):

To determine whether T. Kent Atkins, Mary Helen Atkins, and their companies have engaged in a pattern of premature, unauthorized construction and operation at Station KAMY-FM and KLMN(FM);

No. of Copies rec'd
List A B C D E

046

To determine whether SEMFOT has violated Sections 1.65 and 73.3514 of the Commission's Rules in failing to report material and decisionally significant information in the instant application;

To determine whether T. Kent Atkins, Mary Helen Atkins, SEMFOT, and related companies are financially qualified to construct and operate all proposed stations for which applications were pending when Mr. Atkins so certified in the instant application on June 1, 1990, and at present;

To determine whether SEMFOT misrepresented the facts or lacked candor with the Commission in certifying to its financial qualifications and, if so, the effect thereof on its qualifications to be a licensee;

To determine whether SEMFOT is a bona fide educational organization eligible for treatment as a non-commercial applicant; and

To determine, in light of the facts adduced pursuant to the foregoing issues, whether SEMFOT is qualified to be a Commission licensee.

The Mass Media Bureau submits the following comments.

2. As an initial matter, the Bureau submits that issues dealing with the conduct of SEMFOT principal T. Kent Atkins would not be moot even if SEMFOT's Petition for Leave to Amend to remove him is granted. It is well established that the removal of an individual wrongdoer does not moot the issue of an applicant's character qualifications growing out of that individual's association with the applicant as an active principal. TV 9, Inc. v. FCC, 495 F.2d 929 (D.C. Cir. 1973); California Broadcasting Corporation, 2 FCC Rcd 4175, 4193-94 (Rev. Bd. 1987); United Broadcasting Company, Inc., 94 FCC 2d

938, 947 (Rev. Bd. 1983); and see, Carmel Broadcasting Limited Partnership, 6 FCC Rcd 4633 (Rev. Bd. 1991); but see Kannapolis Television Co., A Joint Venture, 3 FCC Rcd 2676 (1988).

Unauthorized and Premature Construction Issue

3. Bakcor states that SEMFOT principals T. Kent Atkins and Mary Helen Atkins are trustees of Caprock Educational Broadcasting Foundation ("Caprock"), which is the permittee of Station KAMY-FM in Lubbock, Texas, and the licensee of Station KLMN(FM), Amarillo Texas. Bakcor alleges that Caprock engaged in construction and operation of KAMY-FM prior to Commission consent for such operation. In addition, Bakcor contends that Caprock operated KLMN(FM) in a manner inconsistent with the station's authorization.

4. As Bakcor correctly points out, these allegations have been raised in proceedings involving KAMY-FM and KLMN(FM), and are under investigation by the Commission's staff. It would be more appropriate to address those matters in connection with pending applications for license for KAMY-FM, and for renewal of license for KLMN(FM). To consider them in connection with other, albeit co-owned, entities as well would be wasteful of administrative resources. Indeed, the Hearing Designation Order in this proceeding, 7 FCC Rcd 6834, 6835 and n.1 (1992),

expressly provides that this case is subject to any action taken in proceedings involving several stations, KAMY-FM and KLMN(FM) among them. Thus, at this time, the Bureau opposes addition of the first requested issue.

Non-reporting Issues

5. Bakcor alleges that SEMFOT's above-captioned application, as filed, failed to disclose the pendency of the Commission's investigation, or to list numerous other applications required to be reported. These include five SEMFOT applications for new facilities, four of which were filed on the same day as SEMFOT's instant application, an assignment application, and numerous SEMFOT applications previously dismissed with prejudice. Also referenced are ten earlier dismissed applications for new facilities filed by an affiliated entity, Southwest Educational Media Foundation, Inc., plus 38 then-pending and 17 dismissed LPTV applications filed by Mary Helen Atkins or Spectrum Media, wholly owned by Mrs. Atkins.

6. As Bakcor concedes, there is no requirement for an applicant to disclose a pending Commission investigation, even if the applicant were aware of it. Moreover, the possible existence of an inquiry, without more, is not decisional. Thus, there is no reason for an issue on this basis. However, absent an

adequate explanation by SEMFOT, the Bureau supports addition of a non-reporting issue to inquire into the failure to report other applications. It is axiomatic that non-reporting issues will not be added absent a prima facie showing that the information is of decisional significance, that the violations are repeated, or that an intent to conceal, rather than inadvertence, is present. Evergreen Broadcasting Company, 7 FCC Rcd 6601, 6605 (1992), citing Merrimack Valley Broadcasting, Inc., 82 FCC 2d 165 (1980). Here, the failures to report other applications are numerous. The information is of at least potential decisional significance, particularly in view of the light it might have shed on SEMFOT's financial qualifications. Indeed, a motive to evade financial scrutiny can be inferred. Finally, Bakcor has shown that the failure to report is not likely to have been inadvertent, since SEMFOT previously had been put on notice of the requirement to report the filing of other applications. Specifically, a similar failure to report LPTV applications had been raised against SEMFOT in an earlier proceeding, before SEMFOT's instant application was filed. Moreover, several of the applications unreported in this proceeding were filed on the same day as the instant application so that SEMFOT has no excuse for failing to include them.

Financial and False Financial Certification Issues

7. Bakcor argues that, in view of the numerous pending

applications filed by the Atkins or affiliated parties, SEMFOT's financial qualifications bear scrutiny. The Bureau agrees. See Breeze Broadcasting Company, Ltd., 5 FCC Rcd 6365 (Rev. Bd. 1990). Unless SEMFOT can show that it will rely upon federal or state funding for all of its proposals, it must be held to the same financial standards as would a commercial applicant, and this is so regardless of whether the channel applied for is reserved for educational use or not. See KOED, Inc., 3 FCC Rcd 2821, 2830 (Rev. Bd. 1988). SEMFOT's application indicates that it does not intend to rely upon federal or state funding. Thus, an issue is warranted. Moreover, an issue should be added to determine whether SEMFOT's financial certification was false.

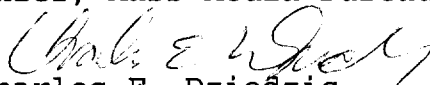
Educational Organization Eligibility Issue


8. Bakcor seeks an issue to determine whether SEMFOT qualifies as an educational organization, pursuant to Section 73.503 of the Commission's Rules. Bakcor argues that SEMFOT has failed to establish that it qualifies because, in Bakcor's opinion, SEMFOT's showing is not specific enough. In fact, there is no requirement for specific educational goals before an applicant can qualify as an educational organization. Palm Bay Public Radio, Inc., 6 FCC Rcd 1772, 1773 (1991). Moreover, noncommercial applicants are no longer required to list their proposed programming. 6 FCC Rcd at 1774. Finally, here, in addition to a statement of SEMFOT's intention with regard to

educational programming, SEMFOT's application referenced its applications for KOJO-FM and KENT-FM. Therefore, in this case, it was also significant that the Commission had earlier found SEMFOT to be a qualified educational organization by granting those applications. We submit that the processing staff's determination that SEMFOT is a qualified educational organization was reasonable, and we oppose addition of an issue.

9. For the reasons set forth in the foregoing comments, the Bureau opposes addition of an unauthorized and premature construction issue and an educational organization eligibility issue. Absent an adequate explanation, we support addition of a non-reporting issue. We support addition of financial and false financial certification issues.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau


Charles E. Dzieńdzic
Chief, Hearing Branch


Y. Paulette Laden
Attorney
Mass Media Bureau

Federal Communications Commission
2025 M Street N.W., Suite 7212
Washington, D.C. 20554
(202) 632-6402


December 15, 1992

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has, on this 15th day of December, 1992, sent by regular United States mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Comments on Motion to Enlarge Issues" to:

James L. Oyster, Esq.
Rt. 1, Box 203A
Castleton, VA 22716

Linda J. Eckard, Esq.
Roberts & Eckard
1919 Pennsylvania Ave, N.W., Suite 222
Washington, D.C. 20006


Michelle C. Mebane